IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

WP(C).No. 33293 of 2006(L)

AGAINST THE ORDER DATED 23/11/06 IN EP.201/05 IN OS.115/2003 of PRL.SUB COURT,TRIVANDRUM

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PETITIONER:

SHAMSUDEEN, S/O.MUSTAFA,
T.C.19/303(4) VATTAVILA,
THIRUMALA P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.M.RAMASWAMY PILLAI
SRI.A.CHANDRASEEKHARAN NAIR
SRI.P.M.JOSEPH

RESPONDENTS:

M.K.MUHAMADALI, S/O.KHADER,
SULTHAN PALACE, THATAMPALLY WARD,
ALAPPUZHA, REP. BY HIS POWER OF ATTORNEY
A.RAJU, RESIDING AT PALAYATHU PARAMBU VEEDU,
COURT WARD, ALAPPUZHA DISTRICT.

BY ADV. SRI.JAMES KURIAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.33293/06

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF EP.201/05 FILED BY RESPONDENT DT.30.6.05

EXT.P2 – TRUE COPY OF OBJECTION ON EP.201/05 FILED BY PETR., DT.19.6.06.

EXT.P3 – TRUE COPY OF APPLICATION FILED BY RESPONDENT, DT.30.6.05.

EXT.P4 – TRUE COPY OF OBJECTION TO EXT.P3 FILED BY PETR., DT.19.6.06.

EXT.P5 – TRUE COPY OF APPLICATION DT.5.10.06 FOR ISSUING WARRANT.

EXT.P6 – TRUE COPY OF ATTACHMENT SCHEDULE DT.18.11.06.

EXT.P7 – TRUE COPY OF APPLICATION FILED BY PETR.

EXT.P8 – TRUE COPY OF ORDER DT.23.11.06 PASSED BY SUBORDINATE JUDGE.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.33293 OF 2006

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DATED THIS THE 21st AUGUST, 2007

J U D G M E N T

Impugned in this Writ Petition under Article 227 of the Constitution is Ext.P8 order passed by the execution court under which that court has found that the petitioner is possessed of sufficient means to pay the decree-debt and that in spite of the same he is willfully neglecting to pay and on that basis ordered warrant for his arrest and detention in civil prison.

2. This Court became inclined to admit this Writ Petition and grant stay of execution only on condition that the petitioner shall pay a sum of Rs.50,000/- within a period of one month. It is not disputed that the above amount is not paid. Ordinarily, this Court will not be inclined to grant final relief in favour of a party who obtains interim relief by suffering conditions and refuses to comply with the conditions.

3. However, in deference to the submissions of Mr.M.Ramaswamy Pillai, I have examined the impugned order by the parameters applicable to exercise of supervisory jurisdiction by this Court under Article 227. I find that it is after holding an enquiry under Rule 40 of Order XXI of the Code of Civil Procedure that the

impugned order has been passed. In that enquiry, both sides adduced evidence and the court below found that the petitioner is possessed of 12 cents of land within the limits of Thiruvananthapuram City Corporation. The decree-debt is only around Rs.2,50,000/-. I do not find any infirmity in the finding of the court below that it will be possible for the petitioner, if he is sincere, to pay off the decree-debt even by selling a portion of the property. Mr.Ramaswamy Pillai submitted that the property is under attachment. But then, under Order XXI Rule 21 C.P.C., it is open to the decree-holder to invoke simultaneous modes of execution against the person as well as the property of the judgment-debtor.

4. I confirm the impugned order and dismiss the Writ Petition. However, I direct the execution court to keep the impugned order in abeyance for a period of six months on condition that the petitioner pays every month commencing from 5th September, 2007 at the rate of Rs.10,000/- towards the decree-debt. If the petitioner defaults payment of any of the instalments, he will forfeit the above benefit and the impugned order will become operative immediately. Simultaneously, the respondent-decree-holder is directed to take steps for sale of the property which is now under attachment. The court

below will permit simultaneous execution taking into account Rule 21 of Order XXI of the Code.

(PIUS C.KURIAKOSE, JUDGE)

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